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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION NO.2982 OF 2006

Raj Marketing)
Gala No.8, 8, Senior Tyre)
Compound, N.S.S. Road, Narayan)
Nagar, Ghatkopar (W), Mumbai-)
-400 086K.)..PETITIONER

Vs.

1.State of Maharashtra)
2.Inspector of Metrology,)
Ghatkopar, A Division 72,)
Moreshwar Patankar Marg, Kurla)
(W), Mumbai-400 070)
3.Controler of Legal Metrology,)
Maharashtara State, Government)
Barrack No.7, Free Press)
Journal Marg, Mumbai-400 021.)
4.Union of India through)
Secretary, Department of)
Consumer Affairs, Ministry)
of Food & Consumer Affairs,)
Krishi Bhavan, New Delhi)
-110 001.)..RESPONDENTS

Mr. Navroz Seervai, Senior Advocate Mr. Nimish Kothare and Mr. Shiv Prasad and Mr. Paul PP i/b. M/s. Nanu Hormasjee & Co., for the Petitioners.
Mr. K.R. Belosey, Government Pleader for respondent Nos.1 to 3.
Mr. Y.S. Bhate, for respondent No.4.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE: 8TH DECEMBER, 2006

JUDGMENT (PER F.I. REBELLO, J.)

. On 31st October, 2006, the Respondent No.2 visited the petitioners godown and seized various packages of packed commodities containing (1) Mangaldeep agarbattis, (2) Wholesale packages of Badam Halwa, (3) Wholesale packages of Candyman vide seizure receipt No.0114769 dated 31st October, 2006 and (4)Wholesale packages of Mint-o Fresh, (5) Multipiece packages of Wheat Atta. According to the afidavit filed by Govind Ananda Padhghan, Deputy Controller of Legal Metrology, Mumbai the reasons for seizure are as under:-

(a) On the packaged commodities containing Mangal Deep Puja Agarbatties the original MRP declared by manufacturer, is altered by affixing another sticker of Rs.35/- on the original sticker.

(b) On the wholesale packagers containing (2) Badam Halwa (3) Candy Man, (4) Minto fresh, the name and address of manufacturer is not declared.

(c) On the multi-piece packages containing

the Ashirwad whole wheat Atta the retail sale price is not declared. The details of seizure and reasons for seizure are clearly mentioned in the above two seizure receipts and in the panchanama dated 30.10.2006. I say that the respondent No.2 has taken the legal action against the Petitioner, Marketier and Manufacturer, under the power and authority of abvoesaid Act and Rules. I say that the Respondent No.2 has seized and detained and taken possession of the packaged commodities as mentioned in the Seizure Receipt No.0114770 dated 31.10.2006 and other seized and detained packaged commodities are kept with the petitioner as per the Undertaking dated 31.10.2006. I say that on 6.11.2006, the Respondent No.2 has issued show cause notices to petitioner and the respective Marketiers' and Manufacturers of the seized packaged commodities."

2. It is the petitioners contention that the seizure of the said packages and the compounding notice are ex-facie illegal and bad in law for the following reasons:-

(1). In so far as Mangaldeep Puja Agarbatties it is submitted that the seizure proceeds on wrong factual assumptions and allegations. It is submitted

that the sticker affixed on the pre-packed commodity is not by the petitioner, but by the manufacturer.

. Alternatively it is submitted that the provisions of the Act and Rules are not applicable to the Agarbatti packages as a specific notification has not been issued in respect of a packed commodity like agarbatti as required under Section 2(3)(d) of the Standards of Weights and Measures Act, 1976, which hereinafter shall be referred to as the Act.

. (2) In so far as the seizure of the wholesale packages of Candyman, Minto-Fresh and Badam Halwa. It is submitted that under the Act and the Rules framed the corrugated fibreboard containers (hereinafter referred to as CFSs) are not wholesale packages and consequently there was no requirement that the name and address of the manufacturer and net quantity had to be made on the CFCs. All those requirements, it is submitted, have to be shown on the wholesale package and retail package as the case may be. CFCs are not commodities in packed form nor is the CFC wholesale package and to that extent the action of the respondents is illegal null and void.

3. We may now deal with the contentions as urged on behalf of the petitioners. Admittedly in so far as Mangaldeep Agarbattis are concerned there was a label affixed on the prepacked commodity in a package

showing the price as Rs.35/-. The printed price on the package shows MRP as Rs.30/-. Rule 23 sub-rule (6) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, hereinafter referred to as the Rules, reads as under:-

> "(6) No retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer, as the case may be, on the package or on the label affixed thereto."

There is alteration of the retail sale price. Under Rule 6 every package shall bear thereon or on a label securely affixed thereto at a definite place, a conspicuous declaration, made in accordance with the provisions of Chapter-II. In other words the information must be on the package or a label securely affixed thereto. In the instant case there is no dispute that on the package MRP was printed as Rs.30/-, but on the label affixed on the package the price was shown as Rs.35/-. The explanation given by the petitioner is that the act was not on their part, but on the part of the manufacturer. If that be the case that issue will require investigation of facts and by a Competent Forum. That exercise cannot be done by this Court in the exercise of its extra ordinary jurisdiction. Therefore, in so far as Agarbattis are concerned in our opinion it would not

be possible to exercise our extra ordinary jurisdiction.

4. That leaves us with the second contention that there has been no Notification issued under Section 1(3) in so far as Agarbattis are concerned. Reliance for that purpose was placed on the judgment of a learned Single Judge of the Andhra Pradesh High Court in **Titan Watches Limited, Bangalore vs. Senior Inspector, Legal Metrology Weights & Measures Department, Mehboobnagar & others, AIR 2003 AP.175**. Such an issue had come up for consideration in **Subash Arjandas Kataria vs. State of Maharashtra and others, AIR 2006 Bom. 293**. That submission was noted in para.4(a). After considering the various notifications in para.5 we have noted that by Notification dated 26th September, 1977 various provisions of the Act as set out therein, have been brought into force and once those sections had come into force there was no need for a different notification specifying the different dates for different provisions of the Act to be brought into force for the various areas or class of commodities. The submission, therefore, on behalf of the Respondents in that case that different dates have to be notified for various areas, classes or undertakings, etc., was rejected. We thereafter held that we could not agree with the view taken by the learned single Judge of the Andhra Pradesh High

Court. In our opinion, the contention as urged in so far as Section 1(3) of the Act is concerned, must also be rejected.

5. We then come to the seizure in respect of the other packages. Rule 2(x) defines a wholesale package to mean:-

> "(x) "wholesale package" means a package containing--
>
> (i) a number of retail packages,where such first mentioned package in intended for sale, distribution or delivery to a intermediary an and is not intended for sale direct to a single consumer.
>
> (ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in smaller quantities.
>
> (iii) packages containing ten or more than ten retail packages provided that the retail packages are labelled as required under the Rules."

The next relevant Rule is Rule 29 which reads as under:-

"**29. Declaration to be made on every wholesale package.-** Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to.--

(a) The name and address of the manufacturer or where the manufacturer is not the packer, of the packer;

(b) the identify of the commodity contained in the package; and

the total number of retail packages contained in such wholesale package or the net quantity in terms of standard units of weights, measures or number of commodity contained in wholesale package:

Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration similar to the declarations specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force."

It would thus be clear from a reading of Rule 29 read with Rule 2(x), that for violation of the Rules the package seized must fall within the expression

wholesale package. If the said definitions are considered, is it possible to hold that the goods which have been seized other than agarbattis are a wholesale package requiring compliance with the requirement of Rule 29.

. To answer that issue the first test would be whether that package is a package for the purpose of the Rules. A wholesale package or a retail package for the protection or safety may be packed in a container. The wholesale package or retail package bears the information as required under the Rules, but the outer package for safety or convenience contains nosuch details. In such a case is the outer package which we may refer to as a secondary package a wholesale package and if so, on the facts of this case is there a breach of the provisions of the Act and the Rules. In the case of Subhash Arjandas Kataria (supra) we have considered the expression pre-packed commodity. This has been further elaborated in the unreported judgment of this Court in Titan Industries Ltd. vs. Union of India & Ors., in Writ Petition No.1848 of 2002 dated 10th July, 2006. We have taken the view there that a package used merely for protection during conveyance or safety would not be prepacked commodity for the purpose of the Act and the Rules. The learned Counsel for the petitioner has drawn our attention to the judgment of the Supreme Court in Union of India &

Ors. vs. Godfrey Philips India Ltd., (1985) 4 SCC 369. That Judgment was delivered under the provisions of the Central Excise and Salt Act, 1944. But what is relevant to note is that the Supreme Court in that case was considering whether the corrugated fibre board containers are necessary for selling the cigarette to the wholesale dealers at factory gate. This was because the value of the package would have to be considered for the purpose of fixing the excise duty. The Court held that corrugated fibreboard containers are not necessary for selling cigarettes at the wholesale at the factory gate. In a concurrent judgment on the same point Justice Amarendra Nath Sen observed as under:-

> "I am of the opinion that any secondary packing done for the purpose of facilitating transport and smooth transit of the goods to be delivered to the buyer in the wholesale trade cannot be included in the value for the purpose of assessment of excise duty."

From the discussion above, it would be clear that for the package to be treated as a wholesale package the package must not be a secondary package,in other words a container for the convenience or safety of the goods contained in the wholesale or retail package. The question therefore, would be whether the secondary package is only for safety, convenience

or the like. Counsel has produced and shown to us both the wholesale package as well as retail package. There is no dispute raised by the respondents that on the wholesale package as well as on the retail package which is sold to the customer the necessary information as contemplated by the Act and the Rules is not contained on the label or packing. The respondents only submission is the secondary package in which the wholesale packages were packed do not contain the said information. In our opinion the secondary outer packing for transportation and/or for safety of the goods being transported or delivered cannot be described as a wholesale package. It is only the wholesale package containing the product inside and not the secondary package like the outer wrapper, or boxes or gunny bags for safety or transport which can be said to be a wholesale secondary package. In the instant case in so far as the packages containing Candyman, Minto-Fresh, Badam Halwa as also gunny sacks of wheat atta cannot be said to be wholesale package.

6. In the light of that Rule made partly absolute in terms of prayer clauses (a)(ii), (a)(iii), a(iv); (b), (c),(d)(i), (ii) and (iii) in so far as the packages of Candyman, Ment-o Fresh, Kitchens of India Badam Halwa and Aashirvaad Atta. The goods be returned forthwith on an authenticated copy of this order being produced before the

Respondents.

. In the circumstances of the case there shall be no order as to costs.

(**F.I. REBELLO, J)**

(**ANOOP V. MOHTA J).**